UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESUS BRITO,

                                    Plaintiff,

                    -v-

LUCKY SEVEN RESTAURANT & BAR, LLC, D/B/A
LUCKY 7 TAPAS BAR, LA CASA DEL MOFONGO
INC., FELIX CABRERA, AVI DISHI, AND JOHN
DOES #1-10,

                                    Defendants.

19 Civ. 3876 (PAE) (KHP)

ORDER

PAUL A. ENGELMAYER, District Judge:

On November 28, 2021, the parties submitted a proposed settlement agreement and a

letter in support, Dkt. 94, in this Fair Labor Standards Act, New York Labor Law, and Wage

Theft Protection Act action. On December 22, 2021, the Court declined to approve the proposed

agreement given its failure to include within its non-disparagement provision an express carve-

out for truthful statements about plaintiff's experience litigating this case. Dkt. 95. On

December 29, 2021, the parties submitted a revised settlement agreement ("Agreement")

including such a carve-out. Dkt. 98.

Parties cannot privately settle FLSA claims with prejudice absent the approval of the

district court or the Department of Labor. *See Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d

199, 200 (2d Cir. 2015). Rather, the parties must satisfy the Court that their agreement is "fair

and reasonable." *Velasquez v. SAFI-G, Inc.*, No. 15 Civ. 3068 (WHP), 2015 WL 5915843, at *1

(S.D.N.Y. Oct. 7, 2015). Further, "[t]he Court must . . . separately assess the reasonableness of

plaintiffs' attorneys' fees, even when the fee is negotiated as part of a settlement rather than

judicially determined." *Lliguichuzcha v. Cinema 60, LLC*, 948 F. Supp. 2d 362, 366 (S.D.N.Y. 2013).

The Court has carefully reviewed the Agreement. Under the Agreement, defendants are to pay $200,000 in total. Plaintiff is to receive $130,171.85 and plaintiff's counsel, Stein & Nieporent LLP, is to receive $69,828.15. *See* Agreement ¶ 1; Dkt. 98-1 (Agreement Rider). The Agreement therefore allocates one-third of the net settlement amount to plaintiff's counsel as attorneys' fees and reimbursement for expenses, which is common. *See Trinidad v. Pret a Manger (UDS) Ltd.*, No. 12 Civ. 6094 (PAE), 2014 WL 4670870, at *11 (S.D.N.Y. Sept. 19, 2014) ("[A]warding fees of 33% is common in this district."); *Deran v. Antalia Turkish Cuisine LLC*, No. 19 Civ. 6833 (BCM), 2020 WL 3414890, at *2 (S.D.N.Y. June 22, 2020) (approving settlement agreement awarding attorneys one-third of total settlement amount net of costs).

Nothing else in the Agreement gives the Court pause. The Agreement does not contain a confidentiality provision that would undermine the broad remedial purposes of the FLSA. *See Lopez v. Nights of Cabiria*, LLC, 96 F. Supp. 3d 170, 177–81 (S.D.N.Y. 2015). And, although the Agreement contains a non-disparagement provision, it includes the requisite "carve-out" for truthful statements about plaintiff's experience litigating this case. *See Lazaro-Garcia v. Sengupta Food Servs.*, No. 15 Civ. 4259 (RA), 2015 WL 9162701, at *3 (S.D.N.Y. Dec. 15, 2015) (noting that "not all non-disparagement clauses are per se objectionable," but that "if the provision would bar plaintiffs from making any negative statement about the defendants, it must include a carve-out for truthful statements about plaintiffs' experience litigating their case") (internal quotation marks and citation omitted). Agreement ¶ 8(a). Additionally, the release provision in the Agreement is not overbroad, as it is limited to wage-and-hour claims against defendants relating to the claims in the litigation. *Id.* ¶ 2; *see Lazaro-Garcia*, 2015 WL

9162701, at *2 ("[A]ny release provision must be limited to the claims at issue in this action.").

In sum, upon careful review of the Agreement, the Court is satisfied that the Agreement was

achieved through procedurally fair means and is fair and reasonable such that it satisfies the

standard set forth in *Cheeks v. Freeport Pancake House*.

Accordingly, the Court approves the Agreement. The Clerk of Court is respectfully

directed to close this case.

SO ORDERED.

Paul A. Engelmayer
United States District Judge

Dated: December 30, 2021
New York, New York